



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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I. SUBJECT: UPDATED SUMMARY OF THE “RAISE THE AGE” LAW AND ITS IMPACT ON THE DEPARTMENT

A. Overview

Beginning October 1, 2019, 17-year-olds will be treated similar to 16-year-olds in the criminal justice system:

- A 17-year-old charged with any felony will be designated as an “adolescent offender” and their case will be handled in the Youth Part.
- A 17-year-old who commits a misdemeanor (except a VTL misdemeanor) will be charged as a juvenile delinquent and their case will be handled in Family Court.
- A 17-year-old charged with VTL misdemeanors, violations, and traffic infractions will have their cases handled in criminal court.
- A 17-year-old prisoner must be held in an OCA-approved juvenile room and can only be transported with other juvenile prisoners.
- Juvenile interrogation procedures will apply to 17-year-olds when in Department custody.

Additionally, a variety of rules exist which regulate the Department’s ability to release information to the media regarding adolescent offenders, juvenile offenders, and juvenile delinquents.

II. DISCUSSION

A. Introduction

The purpose of this Bulletin is to provide an updated overview of the “Raise the Age” Law and its impact on the Department.

Currently, the age of criminal responsibility in New York State is 17 years of age. On October 1, 2019, this law raises the age of criminal responsibility to 18 years of age.¹ For reference, someone who is “criminally responsible” is prosecuted in a criminal court, including the newly established “Youth Part” which is discussed further in this bulletin. Someone who is not criminally responsible is still accountable for their behavior, but will be brought before a court other than a criminal court (such as Family Court) and an adverse outcome will not be considered a conviction.

It is essential to note that juvenile arrest procedures for persons age 15 and younger **have not changed**. The “Raise the Age” Law focuses on the treatment of 16 and 17-year olds in the criminal justice system. The law affects arrest processing, prisoner holding, custodial questioning and parental notifications for these ages. **UMOS will employ the same rules and procedures that they have used regarding 16-year-olds and now apply them to 17-year-old arrestees beginning on October 1, 2019.**

B. Criminal Responsibility for 17-Year-Olds

Beginning October 1, 2019, similar to a 16-year-old, a 17-year-old is only criminally responsible for the below acts. This means that a 17-year-old may be prosecuted in a criminal court for the following:²

- Felony;
- Vehicle and Traffic Law (VTL) Misdemeanor (such as reckless driving, DWI, leaving the scene of a personal injury incident, etc.);
- Violation;
- Traffic Infraction

A 17-year-old will not be criminally responsible for a misdemeanor (non-VTL) unless it is accompanied by a felony charge that is stemming from the same criminal transaction, or from a reduction or dismissal of the felony charge in exchange for a guilty plea on the misdemeanor. Consequently, 17-year-olds will be charged with juvenile delinquency where an act constituting a misdemeanor (non-VTL) has been committed on or after October 1, 2019.

C. Processing of 17-Year-Olds

1. The Importance of the Juvenile Crime Desk

When UMOs take enforcement action against a person who is 17-years-old on or after October 1, 2019, the charges will dictate how the 17-year old is to be processed. As a general rule, in all instances where UMOs take enforcement against a juvenile (including 17-year-olds beginning October 1, 2019) the Real Time Crime Center’s Juvenile Crime Desk **must be consulted**. The Juvenile Crime Desk provides assistance and direction to UMOs who arrest or detain a juvenile and will provide guidance when making processing decisions.

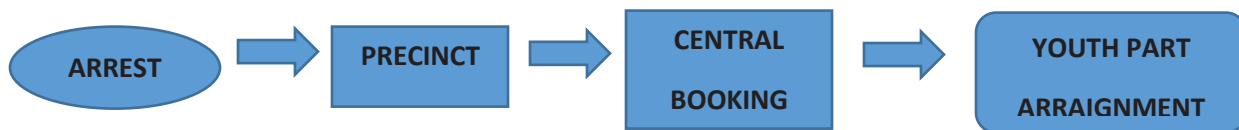
¹ This bulletin updates Legal Bureau Bulletin Vol. 48, No. 5, which was released in September 2018 and addressed the first phase of the law raising New York’s age of criminal responsibility from 16 to 17 years of age on 10/1/18.

² Penal Law § 30.00(3).

2. Parental Notification

The “Raise the Age” Law amended both the Criminal Procedure Law and the Family Court Act to mandate that the same parental notifications required for arrests of all other juveniles will now apply to 17-year-olds.³ Beginning October 1, 2019, whenever a police officer arrests a 17-year-old, a parent or guardian must be notified about the arrest and the location of the facility where the 17-year-old is being detained.

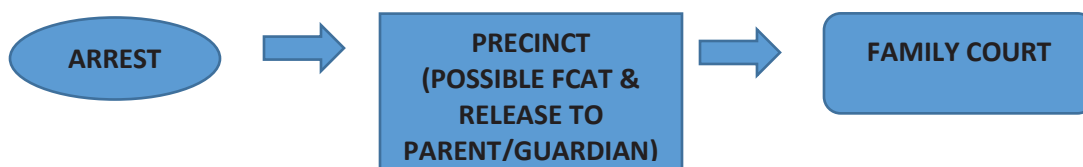
3. Felony Arrests - Youth Part and Adolescent Offender Status⁴



The “Raise the Age” Law created a new criminal court, known as the Youth Part. This court will handle the flow and intake of 16 and 17-year-old felony cases as well as all Juvenile Offender cases. Juvenile Offender status will continue to be applied to 13-, 14-, and 15-year-olds charged with specified felonies. A 17-year-old charged with **any felony committed on or after October 1, 2019** will be designated as an **Adolescent Offender**.

The adolescent offender designation applies only to 16 and 17-year-old felony arrestees. This designation is separate and apart from Juvenile Offender status. In most boroughs, the Youth Part will be held in Supreme Court during business hours and in the evening will be convened in Criminal Court. All felony cases involving 16 and 17-year-olds will originate in the Youth Part, but if certain conditions are met,⁵ the case may be transferred or removed to Family Court after arraignment.

4. Misdemeanor Arrests - Family Court and Juvenile Delinquency⁶



In order to accommodate 17-year-olds charged with misdemeanors (except VTL misdemeanors), the definition of a **juvenile delinquent** was expanded in the Family Court Act to

³ See Criminal Procedure Law §§ 140.20(6), 140.27(5), 140.40(5); N.Y. Fam. Ct. Act § 305.2(3).

⁴ The diagram above shows the basic arrest process for adolescent offenders and juvenile offenders during week-day business hours. Youth Part processing varies during non-business hours and on the weekends. UMOS are reminded to consult the Juvenile Crime Desk on proper processing.

⁵ See Criminal Procedure Law § 722.23(1)(a). The new law permits the transfer of cases to Family Court where the defendant is charged with a “non-violent” felony. The District Attorney may also seek to prevent transfer of any other felony if extraordinary circumstances can be demonstrated to the court.

⁶ The diagram above shows the basic arrest process for juvenile delinquents during week-day business hours. Family Court processing varies during non-business hours and on the weekends.

apply to persons over 7 years of age and **less than 18 years of age** who commits an act that would constitute a crime if committed by an adult.⁷ A 17-year-old charged with a misdemeanor (except a VTL misdemeanor) committed on or after October 1, 2019 will have his/her case adjudicated in Family Court as a juvenile delinquent.

In processing a juvenile delinquency arrest, the Family Court Act permits eligible juveniles to be released from a police facility through the issuance of a Family Court Appearance Ticket (FCAT).⁸ Beginning October 1, 2019, 17 year-olds who are charged as juvenile delinquents may receive an FCAT, if eligible. In all cases, where a 17-year-old receives an FCAT, he/she may only be released to the custody of a parent/guardian, lawful custodian, or a responsible adult relative by evidence of identity and relationship to him/her.⁹ This is the same process that applies to all other juvenile delinquents.

UMOS should review Patrol Guide Section 215-12, *Personal Recognizance Juvenile Delinquent*, in order to determine a 17 -year-old juvenile delinquent's eligibility for an FCAT.

5. VTL Misdemeanors, Violations, and Traffic Infractions

As mentioned previously, similar to 16-year-olds, 17-year-olds maintain adult criminal responsibility for VTL misdemeanors, **all** violations, and traffic infractions and thus may be prosecuted in criminal court for these offenses. UMOS, however, may still use discretion to address these offenses with a criminal, civil, and traffic summons or a Juvenile Report, where applicable. In most cases, the "Raise the Age" Law preserves this discretion.

For example, 17-year-olds can continue to receive criminal court summonses and desk appearance tickets for offenses that are classified as violations, such as disorderly conduct or trespass in the Penal Law.¹⁰ Most moving violations are classified as traffic infractions in the VTL and NYC Traffic Rules. Thus, 17 -year-old motorists may continue to receive moving summonses ("B summonses") returnable to the Traffic Violations Bureau. For offenses committed in the Transit System, 17-year-olds can continue to receive summonses returnable to the Transit Adjudications Bureau (TAB). Additionally, where appropriate, they may continue to receive criminal court summonses for pedestrian offenses in the VTL and NYC Traffic Rules that are classified as traffic infractions.¹¹

A 17-year-old who has been charged with a VTL misdemeanor will have their case adjudicated in Criminal Court. If eligible and where appropriate, criminal court summonses and/or desk appearance tickets may be issued for these offenses.

⁷ See N.Y. Fam. Ct. Act § 301.2(1).

⁸ *Id.* at §§ 305.2(4)(a), 307.1.

⁹ *Id.*

¹⁰ 16 and 17-year-olds maintain criminal responsibility for *all* violations. This includes violations found in the Penal Law, but also other bodies of law such as the Administrative Code and NYC Parks Rules. Members of the Service are reminded to comply with Patrol Guide Section 209-33. The summoning officer should attempt to notify a parent or guardian when issuing a criminal court summons to a 16- or 17-year-old.

¹¹ Note that the Traffic Violations Bureau maintains jurisdiction over infractions related to traffic, except those related to pedestrian offenses. N.Y. Veh. & Traf. Law § 225(1). Criminal Court maintains jurisdiction over traffic infractions that are pedestrian offenses. See Criminal Procedure Law § 10.30(a).

Additionally, the Department will expand the Juvenile Report System to 17-year-olds. Where a violation, other petty offense, or even a misdemeanor has been committed, 17-year-olds may be eligible to receive a Juvenile Report for such conduct. As always, UMOS should consult the Juvenile Crime Desk to determine whether a 17-year-old is eligible for a Juvenile Report.

It should be noted that, as a result of this law, **criminal court summonses cannot be issued for misdemeanors (except VTL misdemeanors)** to 16 and 17-year-olds.¹² Instead, an FCAT or Juvenile Report may be issued for these offenses, where eligible.

6. Multiple Charges

Both the Criminal Procedure Law and the Family Court Act provide two basic rules regarding a court's jurisdiction to adjudicate 17-year-olds charged with multiple crimes and offenses:

- Whether the crimes or offenses **arise out of the same transaction or occurrence**; and
- Generally, the highest criminal charge will determine the court returnable

The below chart demonstrates the returnable court based on a variety of charges.

CHARGE COMBINATION¹³ FOR 16 AND/OR 17-YEAR-OLD ARISING OUT OF SAME TRANSACTION OR OCCURRENCE	RETURNABLE TO THE FOLLOWING COURT....
Felony + Any other offense	 Youth Part
Misdemeanor (non-VTL) + Misdemeanor (non-VTL)	 Family Court
Misdemeanor (non-VTL) + Violation/Infraction	 Family Court
VTL Misdemeanor + Violation/ Traffic Infraction	 Criminal Court
VTL Misdemeanor + Misdemeanor (non-VTL)	 Return to applicable court on one charge and DAT/FCAT/Summons on other charge

¹² This would include, for example, misdemeanors found in the NYC Administrative Code, such as possession of an imitation pistol (AC § 10-131(g)) or Unlicensed Ticket Selling (AC § 20-551(a)(1)), as well as the Agriculture and Markets Law (concerning animals), Navigation Law, and the General Business Law.

¹³ This table assumes scenarios where a live arrest is taking place. It is not meant to foreclose the discretion UMOS have to utilize alternative enforcement options such as criminal, civil, and traffic summonses, DATs, FCATs, and juvenile reports, etc., where applicable, to address conditions.

D. Precinct Holding and Interrogation of 17-Year-Olds

Beginning October 1, 2019, similar to other juveniles, 17-year-old arrestees must be separated from adult arrestees prior to and during arrest processing. They are to be held in the command's juvenile room(s) approved by the Office of Court Administration (OCA). They will be housed with other juvenile prisoners in these rooms. Adolescent Offender, Juvenile Offender, and Juvenile Delinquent prisoners may all be transported together.

Several provisions of the Criminal Procedure Law and the Family Court Act were amended relating to the interrogation of juveniles.¹⁴ Essentially, the same rules regarding the interrogation of juveniles must apply to 17-year-olds. Department policies regarding the electronic recording of custodial interrogations for juveniles must apply to 17-year-old adolescent offenders and juvenile delinquents.

If it is necessary to question a juvenile (including a 17-year-old), then such questioning **must** take place in a squad video interrogation room¹⁵ or an OCA-approved juvenile room. A 17-year-old cannot be questioned unless he/she and a parent, or legal guardian, have been advised of the 17-year-old's *Miranda* rights.¹⁶

Miranda Warnings for Juvenile Interrogations (PD 244-1413) should be read while the parent or legal guardian is present. A juvenile may be interrogated if he/she waives his/her *Miranda* rights in the presence of the parent or legal guardian for his/her care. The parent/guardian does not have to separately waive the *Miranda* rights; they only need to be advised of such rights.¹⁷ However, if the parent or legal guardian objects to the questioning or requests an attorney for the juvenile, no questioning should occur even if the juvenile is willing to answer questions.

During a suppression hearing, when the court is determining if a juvenile should have been questioned and if the questioning itself was appropriate, the court will take into account if a parent or a legal guardian was present, and if not, how much effort was put into contacting the parent or guardian.

Nevertheless, there will certainly be occasions when a parent or legal guardian for the 17-year-old's care either cannot be reached or completely refuses to come to the Department facility where the juvenile is detained. In determining whether questioning should take place without the presence of a parent or legal guardian, UMOS should be guided by the following, which applies to all juvenile interrogations:

¹⁴ See Criminal Procedure Law §§ 140.20(6), 140.27(5), 140.40(5); N.Y. Fam. Ct. § 305.2.

¹⁵ The law requires that interrogations take place in spaces designated by OCA as suitable for the questioning of juveniles. Except for the 45th Precinct, all squad video interrogation rooms have been designated as suitable spaces for the questioning of juveniles by OCA.

¹⁶ N.Y. Fam. Ct. Act § 305.2(3) states that if the person legally responsible for his/her care is unavailable, then the person with whom the juvenile resides must be notified.

¹⁷ See *Matter of James W.*, 130 A.D.2d 753 (2nd Dep't 1987) (holding that juvenile's statements to police were the voluntary result of valid waiver of juvenile's rights; police questioned juvenile in specially-designed facility, in the presence of juvenile's father, and only after informing juvenile and his father of the *Miranda* rights.).

- Make every reasonable effort to contact the parent or legal guardian, and provide ample time for them to come to the Department facility. **Document such efforts.**¹⁸
- Determine if the questioning is necessary at the time; and
- Consider the apparent intelligence of the juvenile and the ability of the juvenile to understand *Miranda* warnings.

If the decision is made, based on the above factors, to interrogate a juvenile, the following is advised:

- A good faith attempt must be made to have a competent adult, other than law enforcement personnel, present during any questioning (e.g., a relative, clergyman, teacher, etc.); and
- Special care must be taken to ensure that the juvenile understands his/her rights and the effect of a waiver of those rights.

In any case where a juvenile is questioned in the absence of his parent or legal guardian, UMOs must be prepared to demonstrate that any confession was made voluntarily, and that the waiver of his/her rights was voluntary, knowingly, and intelligently made, and that prompt and repeated attempts to reach the juvenile's parents, or legal guardian, were made and properly documented.

E. Permissible Release of Information to the Press

When it comes to adolescent offender and juvenile offender arrestees, the Department may generally release information to the press regarding criminal charges in a pending case or after a conviction. Information may not be released to the press, however, if the case is sealed, transferred to Family Court,¹⁹ or results in a youthful offender finding.

Both adolescent offenders and juvenile offenders are prosecuted in criminal court and adult sentencing applies in these cases. Thus, information relating to the recent apprehension of an adolescent offender or juvenile offender may be released to the press. No further information should be released to the press if such arrest results in sealing, a transfer to Family Court, or a youthful offender finding. A mugshot photograph of an adolescent offender or juvenile offender

¹⁸ See, e.g., *In re Chaka B.*, 33 A.D.3d 440 (1st Dep't 2006) (holding that statement by juvenile to police was not rendered inadmissible at delinquency proceeding due to absence of parent or other relative during questioning; police made reasonably diligent efforts to notify a parent or other relative before questioning); *People v. Bonaparte*, 130 A.D.2d 673 (2nd Dep't 1987) (finding that police officer's failure to advise juvenile offender's mother of her son's *Miranda* rights did not deprive juvenile's right to due process since mother twice refused to come to police station on her own or to accept ride in police vehicle; court further holds that "[i]f we were to apply the greater protections afforded to juvenile delinquents we would reach the same conclusion."). See also N.Y. Fam. Ct. Act § 305.2(8) ("In determining the suitability of questioning and determining the reasonable period of time for questioning such a child, the child's age, the presence or absence of his parents or other persons legally responsible for his care and notification . . . shall be included among relevant considerations.").

¹⁹ Records related to an adolescent offender or juvenile offender case that is transferred to Family Court are designated as confidential and cannot be made available to the public. Criminal Procedure Law § 725.15.

may be used in a wanted poster, provided such photograph is not associated with a previous arrest that has been sealed.²⁰

Regarding juvenile delinquents, their records must be kept confidential. Therefore, the Department must not release any information to the public concerning the apprehension of juvenile delinquents. While the Department may generally acknowledge, without providing identifying information, that an arrest of a juvenile was made for a particular crime, it is prohibited from releasing information contained in juvenile delinquent arrest records or arrest photographs. Further, the Department is prohibited from creating wanted posters to the public containing juvenile delinquent photographs; and so, such posters will be unavailable for release to the media and the press.

These principles apply to the release of information through media briefings, written media releases, social media postings, and other outlets intended to disseminate information to the public. None of these requirements, however, curtail a member of the service's ability to release wanted photographs containing photographs or video obtained from surveillance footage and/or social media photographs.

III. CONCLUSION

The "Raise the Age" Law has created new legal standards pertaining to the treatment of 16 and 17-year-olds in the criminal justice system. Members of the Service must follow with care the rules established for arrest processing, prisoner holding, parental notifications, and questioning for this age group as well as acknowledge the various principles that apply to the release of information to the press regarding adolescent offenders, juvenile offenders, and juvenile delinquents.

UMOS are encouraged to contact the Legal Bureau at (646)-610-5400 if he or she has questions relating to this bulletin or the "Raise the Age" Law. For operational or processing questions, UMOs are advised to contact the Juvenile Crime Desk at (646)-610-5884.

²⁰ Photographs related to a sealed arrest must be destroyed pursuant to the Criminal Procedure Law §§ 160.50(1)(a) and 160.55(1)(a), and thus are not available for use in a wanted poster. Moreover, wanted posters should be removed once the person is apprehended. Any wanted posters that contain mugshot photographs must be destroyed if the associated arrest is later sealed.